IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6717 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANTIGAR BHIMGAR GUSAI

Versus

GUJ STATE ROAD TRANSPORT CORPN

Appearance:

1. Special Civil Application No. 6717 of 1990

MR MUKESH H RATHOD for Petitioner

MRS VASAVADATTA BHATT for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 20/02/2004

ORAL JUDGEMENT

The petitioner's service was terminated by respondent vide order dated 29th March, 1982 for remaining absent for 54 days between 27th October, 1981

and 20th December, 1981. He was working as helper in the Bhuj depot workshop of the respondent on monthly salary of Rs.900=00. It appears that despite notice issued by the respondent to resume duty, he had not done so and it was only on 21st December, 1981, he submitted a report to sanction his leave. The said request was however, not granted by the respondent. Ultimately, his unauthorized absence was treated as act of misconduct and the respondent thought it fit to initiate proceedings against him. After due compliance of all the formalities, inquiry was held and upon completion of the same, the Inquiry Officer found that the charge levelled against the petitioner was proved. On the strength of such finding, the disciplinary authority after observing the principles of natural justice passed the impugned order of dismissal from the service.

1.1. The petitioner raised dispute with regard to the said order which ultimately came to be referred to Labour Court, Rajkot for adjudication by way of Reference No. 1949 of 1988 under the provisions of Section 10 (c) of the Act. In the statement of claim that was filed before the Labour Court, it was averred by the petitioner that he had remained absent for 54 days because of the illness of his mother. He also averred that before proceeding on leave, he had submitted a leave report. He has further averred that against the order of dismissal, he had preferred first and second appeals before the appellate authorities. He therefore, averred that Reference was filed after six years. The said claim application was contested by the respondent by filing reply at Exh.9 wherein, it was contended that the petitioner had remained absent from 27th October, 1981 to 20th December, 1981 without leave and despite written intimation, he had not resumed. It was further averred that the envelope by which written intimation was sent, was returned with postal endorsement that the petitioner had gone out of India and was not available. Thereafter, chargesheet was sent to him under Registered Post and the same had been returned by the postal authorities with an endorsement that the workman had left for Arbastan. It was also averred that unauthorized absenteeism was considered as act of misconduct for which appropriate penalty was passed by the disciplinary authority. After taking into consideration the entire material placed before it, on the strength of these averments, it was prayed that the Reference be dismissed. At the hearing of the Reference, the parties produced evidence in respect of their cases. The Labour Court came to the conclusion on the strength of such material, that the petitioner had remained absent without leave of the competent authority for the

aforesaid period; that it had suppressed the material fact and instead made misrepresentation in the claim petition by stating that he had remained absent on account of his mother's illness; that despite the fact that no appeals were filed, he has stated that, time was consumed in prosecuting first and second appeals before the appellate authorities. The Labour Court, therefore, dismissed the Reference.

2. Having seen the record of the petition and having heard Mr.M.H. Rathod and Mrs. Vasavadatta Bhatt, it appears that the order of dismissal was passed in the year 1982. The petitioner thought it fit to challenge it in the year 1988 i.e. six years after the order was passed. The petitioner thereafter, tried to create false story that because he was prosecuting the appeals, delay had been caused. However, during the course of hearing of the Reference, detailed inquiry was made at the instance of the Labour Court and it was found that the petitioner had never preferred any appeals before the appellate authorities. Further from the material that was produced before the Labour Court, it also clearly appears that the petitioner had remained absent as he had gone to middle east countries. Further in respect of delay, he had in the statement of claim petition made a written submission that departmental appeals were filed challenging the order of dismissal, before the appropriate authorities. It may also be noted that because there was a gap of six years, he had stated that not only firs appeal but second appeal was filed with a view to explain long delay. Such approach of the petitioner cannot be tolerated. When such is the state of affair, no sympathetic view can be taken in this matter. One can understand that the petitioner had been guilty of remaining absent without leave for some period and nothing more than that then in such event there is all possibility to take a lenient view in the matter of punishment. However, when the petitioner has not approached the Court with clean hands, he cannot be shown any mercy and no lenient view can be taken. The decision rendered by the Labour Court, therefore, appears to be just and proper calling for no interference by this Court. This petition is, therefore, dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]
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